

MARGARET HUGHEY HUGUS

IBLA 75-385

Decided September 30, 1975

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting noncompetitive acquired lands oil and gas lease offer ES 10770 (Mississippi).

Affirmed.

1. Mineral Leasing Act for Acquired Lands: Generally -- Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Future and Fractional Interests Leases

An acquired lands oil and gas lease offer for lands in which the United States owns only a fractional mineral interest is defective and is properly rejected when the applicant fails to accompany his offer with the statement required by the regulation showing the extent of his ownership of operating rights to the fractional mineral interest not owned by the United States.

2. Administrative Authority: Generally -- Administrative Authority: Estoppel -- Federal Employees and Officers: Authority to Bind Government

Reliance upon erroneous or incomplete information provided by Bureau of Land Management employees cannot create any rights not authorized by law.

APPEARANCES: Peter J. Nickles, Esq., and Robert E. Lighthizer, Esq., Covington & Burling, Washington, D.C., for appellant.

## OPINION BY ADMINISTRATIVE JUDGE LEWIS

Margaret Hughey Hugus 1/ has appealed from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated February 7, 1975, which rejected her noncompetitive acquired lands oil and gas lease offer ES 10770 (Mississippi), filed as a drawing entry card for Parcel 42 in the May 1972 notice of lands available for oil and gas leasing.

Appellant's offer was drawn first in the drawing held pursuant to the procedures in 43 CFR Subpart 3112. The United States owned only 50 percent mineral interest in the lands designated as Parcel 42 as was indicated in the notice. The offer was rejected because it was not accompanied by the mandatory statement required by 43 CFR 3130.4-4 showing the extent of her ownership of the operating rights to the fractional mineral interest not owned by the United States.

Appellant's attorney has filed a lengthy appeal brief together with an affidavit by the Mississippi attorney who represented appellant in the proceeding with the BLM. He argues that Department procedures and regulations do not require that a fractional present interest statement accompany an entry card submitted under the simultaneous offers procedure. Further, he states appellant executed and forwarded the required statement after the drawing but before BLM issued its decision. An estoppel argument appears to be raised by the affidavits attached to the brief. This, in essence, is that during several months' contact by appellant's attorney with the Eastern States Office, personnel in that office led him to believe that the only obstacle to the issuance of the lease was an environmental impact study.

The pertinent regulation 43 CFR 3130.4-4 states:

Fractional present interests.

An offer for a fractional present interest noncompetitive lease must be executed on a form approved

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1/ The appeal is on behalf of Don F. Hugus who purportedly was assigned all of the interest in this offer of Margaret Hughey Hugus. Parenthetically, we note that the case record contains an assignment executed by Margaret Hughey Hugus. However, the name of the assignee has not been inserted, nor has the purported assignee's request for approval of the assignment on the reverse of the assignment form been filled in and executed. Although counsel argues Don F. Hugus' standing to appeal, we do not herein decide this question. We entertain the appeal as Margaret Hughey Hugus' inasmuch as counsel stated "[i]n the event that Mr. Hugus is found not to have standing to bring this appeal then it should be continued in the name of Margaret Hughey Hugus and this Statement of Reasons

by the Director and it must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States in each tract covered by the offer to lease. Ordinarily, the issuance of a lease to one who, upon such issuance, would own less than 50 percent of the operating rights in any such tract, will not be regarded as in the public interest, and an offer leading to such results will be rejected. (Emphasis supplied.)

[1] The requirement that an applicant for a noncompetitive oil and gas lease, where the United States owns only a fractional mineral interest in the land, accompany the offer with a statement showing the extent of the offeror's ownership of the operating rights in the fractional mineral interest not owned by the United States is mandatory. Where there is no such accompanying statement the offer must be rejected. James H. Scott, 18 IBLA 55 (1974); Michigan Wisconsin Pipe Line Co., 17 IBLA 282 (1974); Arthur E. Meinhart, 11 IBLA 138, 80 I.D. 385 (1973). The regulation is clear and free from ambiguity and cannot be disregarded. Michigan Wisconsin Pipe Line Co., *supra*. It is applicable to both simultaneous and over-the-counter filings. Arthur E. Meinhart, *supra*. A later filed statement can cure the defect in the case of an over-the-counter filing subject to intervening rights, but this curative action is not permitted in the case of a simultaneous filing. James H. Scott, *supra*. As the instant offer was a simultaneous filing, we find the late filing of the statement cannot cure the defect.

[2] It is well established that reliance upon information furnished by a federal employee cannot estop the United States or confer upon an applicant for an interest in the public or acquired lands of the United States any rights not authorized by law. 43 CFR 1810.3. James H. Scott, 18 IBLA 55, 57, and cases cited therein. Hence we find appellant gained no rights against the United States from the conduct of the Eastern States Office. 2/

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fn. 1 (continued)

should be considered in her behalf. The Power of Attorney attached to this statement as Exhibit II authorizes the appeal in Mrs. Hugus' name."

2/ Judge Fishman believes that the misinformation assertedly given by that Office is not tantamount to the acts deemed to estop the Government in United States v. Wharton, 514 F.2d 406 (9th Cir. 1975). He reaches this conclusion on the basis that 43 CFR 3103.4-4 is crystal clear in requiring a showing of the operator's ownership of operating rights to the fractional mineral interest not owned by the United States.

The case file and the Statement of Reasons adequately set forth the issues and the position of appellant. Accordingly, we find no useful purpose would be served by having oral argument before the Board and we deny appellant's request.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Eastern States Office, Bureau of Land Management, is affirmed.

Anne Poindexter Lewis  
Administrative Judge

We concur:

Douglas E. Henriques  
Administrative Judge

Frederick Fishman  
Administrative Judge

